



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/126,391	09/23/93	MILLER	W NF1836CIP EXAMINER
HOWARD M. COHN 800 STANDARD BUILDING CLEVELAND, OH 44113		31M1/1130	PIKE, A ART UNIT PAPER NUMBER 8
			3102 DATE MAILED:
This is a communication from the examiner in charge of your application. COMMISSIONER OF PATENTS AND TRADEMARKS			
11/30/94			
<p><input checked="" type="checkbox"/> This application has been examined <input checked="" type="checkbox"/> Responsive to communication filed on <u>October 13, 1994</u> <input type="checkbox"/> This action is made final.</p> <p>A shortened statutory period for response to this action is set to expire <u>3</u> month(s), <u>—</u> days from the date of this letter. Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133</p>			
Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:			
<p>1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. 2. <input checked="" type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. 6. <input type="checkbox"/></p>			
Part II SUMMARY OF ACTION			
1. <input checked="" type="checkbox"/> Claims <u>1 - 41</u> are pending in the application.			
Of the above, claims <u>20 - 35 and 39 - 41</u> are withdrawn from consideration.			
2. <input type="checkbox"/> Claims _____ have been cancelled.			
3. <input type="checkbox"/> Claims _____ are allowed.			
4. <input checked="" type="checkbox"/> Claims <u>1 - 19 and 36 - 38</u> are rejected.			
5. <input type="checkbox"/> Claims _____ are objected to.			
6. <input type="checkbox"/> Claims _____ are subject to restriction or election requirement.			
7. <input checked="" type="checkbox"/> This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.			
8. <input type="checkbox"/> Formal drawings are required in response to this Office action.			
9. <input type="checkbox"/> The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are <input type="checkbox"/> acceptable; <input type="checkbox"/> not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).			
10. <input type="checkbox"/> The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been <input type="checkbox"/> approved by the examiner; <input type="checkbox"/> disapproved by the examiner (see explanation).			
11. <input type="checkbox"/> The proposed drawing correction, filed _____, has been <input type="checkbox"/> approved; <input type="checkbox"/> disapproved (see explanation).			
12. <input type="checkbox"/> Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has <input type="checkbox"/> been received <input type="checkbox"/> not been received <input type="checkbox"/> been filed in parent application, serial no. _____; filed on _____.			
13. <input type="checkbox"/> Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.			
14. <input type="checkbox"/> Other			

EXAMINER'S ACTION

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Part III DETAILED ACTION

Election/Restriction

1. Applicant's election without traverse of Invention I and Species 1 thereof in Paper No. 7 is acknowledged.
2. Claims 20-35 and 39-41 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b) as being drawn to nonelected inventions and species. Election was made without traverse in Paper No. 7.

Oath/Declaration

3. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration in a continuation-in-part application filed under the conditions specified in 35 U.S.C. § 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose material information as defined in 37 C.F.R. § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

The oath or declaration does not identify the prior application.

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Claim Rejections - 35 USC § 112

4. Claims 2-7, 10-19, and 36-38 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 36, lines 19-20, is incorrect. The air is not drawn down through the inner concentric tube, but is drawn down through the annular space between the outer and inner concentric tubes.

The following lack clear antecedent basis: claim 2: line 10, "an angle" (is this the same "angle" as in claim 1, line 5, or is this a different, second "angle"?); claim 3: line 3, "said powder material" (the phrase "powder material" has not been previously so recited); lines 3-4, "said lower container corner"; claim 4: lines 1-2, "said hollow pick-up tube" (it is noted that "said hollow pick-up tube" also occurs in claim 5, lines 1-2); claim 5: line 2, "inlet holes"; claim 10: line 4, "said platform"; claim 36: lines 11-12, "said box shaped outer concentric tube".

Claim Objections

5. Claims 1-19 and 36-38 are objected to because of the following informalities:

The phrase "WE CLAIM: " must precede the claims at the end of the specification. The word "box-shaped" is misspelled as

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"box shaped" in claim 1, lines 2, 5, 6, and 14-15; claim 8, line 5; claim 10, lines 2, 5, 6, 9-10, and 14-15; claim 11, lines 5, 7, and 8; claim 12, line 3; claim 14, lines 4, and 6; claim 17, line 5; claim 18, line 5; and claim 36, lines 2, 5, 6, and 11. The phrase "said apparatus" should follow the comma in claims 1, 10, and 36, lines 2. The word "lowermost" is misspelled as "lower most" in claim 1, line 7. There should be a comma after "tube" in claim 1, line 16. There should be a comma after "plates" in claim 2, line 7. The word "being" should follow "opening" in claim 10, line 13. There should be a comma after "plates" in claim 11, line 7. The word "lowermost" is misspelled as "lower most" in claim 36, line 7.

The following are initial recitations which are not so recited, or are subsequent recitations which are not uniquely and/or consistently recited: claim 1: line 12, "powder" (it should be "the powder"); line 14, "powder"; claim 2: line 9, "the plane" (it should be "a plane"); claim 5: line 2, "the walls" (it should be "walls"); claim 10: line 12, "powder"; line 14, "powder"; claim 13: line 3, "powder"; claim 14: line 4, "powder"; claim 36: line 15, "powder"; line 17, "powder".

Appropriate correction is required.

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Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 6-8, and 36 are rejected under 35 U.S.C.

§ 102(b) as being anticipated by Mulder.

Mulder clearly discloses all of the claimed features, including the pick-up tube being constructed of spaced inner and outer concentric tubes (see Fig. 4). The box-shaped container thereof is shaped as a circularly cylindrical box.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention

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were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

10. Claims 1-2 are rejected under 35 U.S.C. § 103 as being unpatentable over United Kingdom Patent Document no. 2,195,975 (hereinafter referred to as Karpisek) in view of Mulder.

Karpisek clearly discloses almost all of the claimed features. Karpisek lacks that the suction associated with the pick-up tube is from a powder pump.

Mulder clearly discloses almost all of the features (see paragraph 7 above), including a powder pump associated with the pick-up tube for generating a suction which draws the powder from the container.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Karpisek to have a powder pump generate the suction which draws the powder from the container, as taught by Mulder, because a powder pump is a common, modern, more sophisticated way to move the powder (Mulder, column 1, lines 14-21).

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11. Claim 9 is rejected under 35 U.S.C. § 103 as being unpatentable over Mulder in view of Sharpless.

Mulder discloses almost all of the claimed features (see paragraph 7 above), but lacks that the powder is being directly moved from the container to an inlet of a powder spray gun.

Sharpless discloses an apparatus for unloading powder directly from a container to an inlet of a powder spray gun.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus of Mulder to have the powder being directly moved from the container to an inlet of a powder spray gun, as taught by Sharpless, to simplify and reduce the number of equipment needed.

Allowable Subject Matter

12. Claims 4-5, 10-19, and 37-38 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

13. As allowable subject matter has been indicated, applicant's response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

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Trademarks

14. The use of the trademark 100 Plus® has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Abstract

15. The Abstract of the Disclosure is objected to because the word "box-shaped" is misspelled as "box shaped" in line 2. The word "container's" is misspelled as "containers" in line 9. There should be a comma after "tube" in line 11. The Abstract improperly uses the legal phraseology "means" in line 15. Correction is required. See M.P.E.P. § 608.01(b).

Specification

16. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

17. The specification is objected to because of the following informalities:

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The status of the parent application on page 1 should be updated. Page 5, lines 14-19, is grammatically awkwardly worded. Appropriate correction is required.

18. The specification is objected to as failing to properly use trademarks.

The registered trademark 100 Plus® is improperly identified with the symbol "™" on page 7, line 29.

Appropriate correction is required.

19. The specification is objected to under 37 C.F.R. § 1.74 as failing to correctly identify the different parts shown in the figures by unique reference numerals required by 37 C.F.R. § 1.84(p)(4):

The flap is misidentified on page 11, line 12. The second inlet hole is misidentified on page 18, line 33.

Appropriate correction is required.

20. The specification is objected to under 37 C.F.R. § 1.84(p)(5) as failing to identify reference numerals:

Reference numeral 202 with the arrow at the top of Fig. 9 is not explained.

Appropriate correction is required.

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Drawings

21. The drawings are objected to under 37 C.F.R. § 1.84(p) as failing to show the different parts in the figures by reference numerals required by 37 C.F.R. § 1.74:

Vibrator 42 (page 7, line 22) is not shown labeled in Fig. 2.

Correction is required.

22. The drawings are objected to under 37 C.F.R. § 1.84(q) as failing to correctly show lead lines:

The lead line for reference numeral 96 in Fig. 1 is not directed toward the edge. The lead line for reference numeral 59b in Fig. 3 is not directed to the groove, but is instead directed to the inner surface of bore 71.

Correction is required.

23. The drawings are objected to under 37 C.F.R. § 1.84(p)(4) as failing to uniquely and correctly identify reference numerals:

Reference numeral 153 in Fig. 5 should be 154.

Correction is required.

24. Applicant is required to submit a Proposed Drawing Correction in response to this Office Action. Any proposal by the applicant for amendment of the drawings to cure defects must include:

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a sketch in permanent ink in compliance with 37 C.F.R. § 1.123, showing changes in the filed drawings in red ink in accordance with M.P.E.P. § 608.02(v), or showing Proposed Substitute Drawings or Proposed Additional Drawings in black ink.

This proposal should be a separate letter, i.e., drawings with a cover letter with an appropriate heading, e.g., "Proposed Drawing Correction", in compliance with 37 C.F.R. § 1.123.

IMPORTANT NOTE: The filing of new formal drawings to correct the noted defect may be deferred until the application is allowed by the examiner, but the sketch in permanent ink of the Proposed Drawing Correction is required in response to this Office Action, and may not be deferred.

Information Disclosure Statement

25. The Information Disclosure Statement filed on December 9, 1993, of the Gema Volstatic MPS Catalog fails to comply with 37 C.F.R. § 1.98(b) because it was not identified by date of publication as required; "no date" or "date unknown" fails to comply with 37 C.F.R. § 1.98(b). Since the submission appears to be *bona fide*, but through an apparent oversight or inadvertence failed to comply with the necessary requirements, applicant is required to complete the Statement within a time limit of ONE MONTH from the date of this letter. NO EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 C.F.R. § 1.136 (a) OR

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(b). THIS TIME LIMIT DOES NOT AFFECT THE SHORTENED STATUTORY PERIOD ALSO SET IN THIS LETTER, OF WHICH PETITIONS UNDER 37 C.F.R. § 1.136(a) MAY BE FILED BY APPLICANT; IN NO EVENT WILL THIS STATUTORY PERIOD EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS ACTION. Failure to comply with this requirement will result in the Information Disclosure Statement being placed in the application file with the non-complying information being considered as to the merits but not being printed on any patent granted upon the application.

Conclusion

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hart discloses an apparatus for unloading powder comprising a hollow pick-up tube having an open lower end, and having holes extending through walls of the tube above the end.

Williams et al. disclose a pick-up tube comprising inner and outer concentric tubes, with air flowing through the inner tube.

Bischof et al. disclose a pick-up tube comprising inner and outer concentric tubes, with air flowing through the annular space between the outer and inner concentric tubes.

27. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Andrew Pike whose telephone number is (703) 308-3423.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113.

Correspondence related to this application may be transmitted by facsimile in accordance with 37 C.F.R. § 1.6, except for that correspondence for which facsimile transmission is prohibited under 37 C.F.R. § 1.6(d). Facsimile copies of an original signature under 37 C.F.R. § 1.4(d)(2) on correspondence transmitted by facsimile under 37 C.F.R. § 1.6 are acceptable. Applicant should retain the original correspondence papers as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original correspondence papers; BUT APPLICANT SHOULD NOT SUBMIT THE ORIGINAL CORRESPONDENCE PAPERS IN ADDITION TO THAT TRANSMITTED BY FACSIMILE unless specifically required to by the Office. The Group 3100 Fax Center facsimile number is (703) 305-7687.

Andrew C. Pike

11-29-1994

ANDREW C. PIKE
PATENT EXAMINER
ART UNIT 312

acp

November 29, 1994